

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

At the outset, the undersigned expresses appreciation to Examiner Corbin for his time and attention during the interview that was conducted at the U.S. Patent and Trademark Office on February 5, 2004. The remarks below discuss the substance of the interview.

Appreciation is also expressed to Examiner Corbin for indicating that Claims 1-8, 16-20, 30 and 31 are allowed, that Claims 11 and 29 would be allowed if amended to address minor issues with respect to the claim wording, and that Claims 12-14 and 22-26 would be allowable if rewritten in independent form.

As discussed during the interview, the Official Action does not specifically indicate if independent Claim 32 presented in the Amendment filed on September 28, 2003 is allowed. As noted in the Interview Summary completed at the conclusion of the interview held on February 5, 2004, Claim 32 is also allowed.

Claims 1, 2, 16, 31 and 32 have been amended without narrowing the claim scope to address the minor objections set forth at the top of page two of the Official Action. Accordingly, withdrawal of that claim objection is respectfully requested.

In addition, independent Claim 11 has been amended without narrowing the claim scope to adopt the helpful suggestion provided by Examiner Corbin in the bottom half of page two of the Official Action.. Claim 11 thus recites "mixing the potato mash with an artificial or natural sweetener that includes sucralose and optionally a food grade color to produce a potato mixer." Also, the last two lines of Claim 11 have been deleted. The Examiner's suggestion regarding the cancellation

of Claim 29 has not been adopted as it is believed that Claim 29 is not redundant with respect to the subject matter recited in independent Claim 11. That is, Claim 11 recites that the potato mash is mixed with an artificial or natural sweetener that includes sucralose and may optionally be mixed with a food grade color (i.e., food grade color may or may not be mixed with the potato mash and the artificial or natural sweetener that includes sucralose). On the other hand, dependent Claim 29 recites that the potato mash is mixed with food grade color. Thus, while Claim 11 does not require food grade color mixed with the potato mash, Claim 29 does and so it is believed that Claim 29 properly depends from and further limits the method recited in Claim 11 by requiring food grade color, a requirement not specified in independent Claim 11.

In light of the foregoing, withdrawal of the claim rejection based on the second paragraph of 35 U.S.C. § 112 is respectfully requested.

The discussions during the interview focused on independent Claims 9 and 21, the only independent claims which have not been indicated as being allowed. Independent Claim 9 is directed to a method of preparing potato products comprising at least partially cooking potatoes in a water bath or a steam chamber, producing potato mash from the at least partially cooked potatoes, mixing the potato mash with a food grade color to produce a potato mixture, forming the potato mixture into potato pieces, frying the potato pieces, and freezing the potato pieces.

As explained during the interview, U.S. Patent No. 5,484,617 to *Tiffany* discloses a process for preparing potato pieces that is specifically designed to produce potato pieces having a uniform bright golden color. This desired coloring of the potato pieces is achieved by immersing the potato pieces in an aqueous color

solution. More specifically, the disclosed process involves initially preparing raw potato pieces in a conventional manner by peeling and cutting potatoes into desired shapes suitable for partial cooking in a water bath or steam chamber to swell and gelatinize the potato starch over exposed surfaces of the pieces. The potato pieces are then immersed in an aqueous color solution that includes annatto, FD Yellow No. 5, FD Yellow No. 6, beta carotene, and/or turmeric. The potato pieces that are removed from the aqueous color solution have a light golden color and are suitable for further cooking whereupon the color of the potato pieces turns to a deeper golden yellow color. Thus, the disclosure in *Tiffany* is specifically concerned with placing already produced or formed potato pieces into the aqueous color solution so that upon subsequent frying, the potato pieces achieve a desired color.

During the interview, the description at the bottom of column 4 of *Tiffany* was also discussed. This portion of the disclosure in *Tiffany* mentions that the disclosed coloring technique can be used in preparing French fried potato pieces and many other forms of potatoes, whether prepared from raw potatoes or reconstituted from mashed potatoes extruded into other desired configurations or forms. This discussion thus notes that the potato pieces which are dipped into the disclosed aqueous color solution can be potato pieces prepared from raw potatoes or potato pieces formed as extruded potato pieces.

As pointed out during the interview, the claimed method recited in independent Claim 9 involves producing a potato mash, mixing the potato mash with a food grade color to produce a potato mixture and then forming the potato mixture into potato pieces. *Tiffany* does not disclose mixing the disclosed colorant with a potato mash to produce a potato mixture that is then used to form potato pieces.

Rather, as noted, *Tiffany* merely describes that potato pieces either prepared from raw potatoes or formed as extruded potato pieces are dipped into the disclosed aqueous color solution.

Examiner Corbin explained during the interview that he understood this distinction. However, Examiner Corbin went on to explain that if one were to follow the disclosure in *Tiffany* and dip potato pieces extruded from mashed potatoes in the aqueous color solution as described in *Tiffany*, he believed the potato pieces would be colored throughout. Thus, Examiner Corbin expressed the view that since extruded potato pieces dipped in an aqueous color solution as described in *Tiffany* would be colored throughout in much the same way as adding food grade color to a potato mash from which potato pieces are subsequently formed as recited in Claim 9, there would be little difference associated with adding the colorant described in *Tiffany* directly to the mashed potatoes rather than dipping the extruded potato pieces in the aqueous color solution as discussed in *Tiffany*.

The undersigned explained that dipping potato pieces extruded from mashed potatoes in the aqueous color solution as described in *Tiffany* would not cause the potato pieces to be colored throughout. The undersigned discussed with Examiner Corbin submitting a Declaration to establish that dipping potato pieces extruded from mashed potatoes into the aqueous color solution as described in *Tiffany* (an aqueous color solution containing annatto) would not result in potato pieces colored throughout. Attached is a Declaration Under 37 C.F.R. § 1.132 of Susan Farnsworth which describes tests carried out to establish that potato pieces extruded from mashed potatoes and dipped in the aqueous color solution described in *Tiffany* (an aqueous color solution containing annatto) are not colored throughout. Ms.

Farnsworth's Declaration is accompanied by photographs showing various stages of the performed tests. As can be seen from the Declaration and accompanying photographs, potato pieces extruded from mashed potatoes and dipped in the aqueous color solution described in *Tiffany* are not colored throughout. This thus negates the premise upon which the rejection of independent Claim 9 is based.

As a final point and consistent with the discussions during the interview, Claim 9 has been amended without narrowing the claim scope to explicitly recite that which was implicit from the earlier claim language, namely that the potato mash is mixed with a food grade color to produce a colored potato mixture and that the colored potato mixture is formed into potato pieces.

Based on the remarks set forth above and the accompanying Declaration of Ms. Farnsworth, withdrawal of the rejection of independent Claim 9 based on the disclosure in *Tiffany* is respectfully requested.

Independent Claim 21 is directed to a prepared sweet flavored French fried potato product comprising potato pieces produced through addition of an artificial sweetener to impart a sweet taste to the potato product and subsequently fried. This claim was also rejected based on the disclosure contained in *Tiffany*. Here, Examiner Corbin noted that the *Tiffany* patent mentions adding a reducing sugar such as dextrose, arabinose, fructose, galactose, mannose, maltose, lactose or cellobiose to the aqueous color solution. As discussed during the interview, *Tiffany* notes in the discussion in column 3, lines 41-55 that the reducing sugars are added for purposes of providing highlights and extra flavor associated with caramelization during the cooking steps that follow immersion in the aqueous color solution. *Tiffany* thus describes adding the reducing sugar to the aqueous color solution so that when

the potato pieces are subsequently cooked, the reducing sugar will caramelize and provide the desired flavoring and highlights.

As explained during the interview, *Tiffany* does not disclose utilizing an artificial sweetener. Examiner Corbin expressed the view that it would have been obvious to use an artificial sweetener in place of the reducing sugar mentioned in *Tiffany*. However, the undersigned pointed out that an artificial sweetener would not provide the intended caramelization during cooking which is the reason described in *Tiffany* for utilizing the disclosed reducing sugar. The undersigned told Examiner Corbin that an effort would be made to try and locate factual evidence supporting this point. The undersigned and the inventors were unable to locate any publications or literature stating that artificial sweeteners are unable to provide caramelization during cooking in the manner discussed in *Tiffany*. However, as discussed in the accompanying Declaration Under 37 C.F.R. § 1.132 of Craig Doan, information provided by the manufacturer of one of the artificial sweeteners mentioned in the present application confirms that artificial sweeteners do not caramelize and thus cannot be used like sugar to achieve caramelization.

Based on the remarks set forth above and the accompanying Declaration of Mr. Doan, withdrawal of the rejection of independent Claim 21 based on the disclosure in *Tiffany* is respectfully requested.

For at least the reasons set forth above, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

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